4916340/2021/CE-EHE01

Receipt :: 4914284

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Higher Education - Regularization of services of Smt.B.Nirmala, Un-aided Lecturer in Economics and Sri T.Syam Prasad, Un-aided Lecturer in Telugu of A.C. College, Guntur, Guntur Dist in compliance with the orders dated. 20.11.2018 of Hon'ble High Court of A.P in W.P.No 19380 of 2010 – Orders – Issued.

HIGHER EDUCATION [C.E.A2] DEPARTMENT

G.O.Ms.No.46 **Dated: 31/08/2021**

Read the following:-

1. Orders dated.20.11.2018 of Hon'ble High Court of A.P in W.P.No 19380 of 2010.
2. Contempt Case No.545 of 2018 fled in W.P.No 19380 of 2010 before Hon'ble High Court of A.P. Amaravati.
3. Writ Appeal No.340 of 2019 fled in W.P.No 19380 of 2010 before Hon'ble High Court of A.P. Amaravati.
4. Orders dated:01.12.2020 of the Hon'ble Supreme Court in SLP(C). Diary.No.14095 -14097 of 2020.

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ORDER:

Smt. B.Nirmala, Un-aided Lecturer in Economics and Sri. T.Syam Prasad, Un-aided Lecturer in Telugu of A.C. College, Guntur were appointed as un-aided Lecturers from 2001-02 in clear violation of Government instructions issued in Memo.No.1458/CE.I-2/91-1, dated: 11.07.1991 in which Government instructed the Managements of Private Aided Colleges not to engage any fresh Part timers and the services of those who worked as Part Time Lecturers during 1989-90 & 1990-91 should be utilized by paying extra remuneration and without following the selection procedure prescribed in terms of G.O.Ms.No.12, Education, dated. 10.01.1992.

2. Smt. B.Nirmala, Un-aided Lecturer in Economics and Sri. T.Syam Prasad, Un-aided Lecturer in Telugu of A.C. College, Guntur represented to regularize their services as aided lectures, since they are working from 2001-02 as un-aided Lecturer respectively. But, subsequently their pleas were rejected vide Govt. Memo No: 8409/CE.II-1/2007, Dated:28-02-2008 and the same was communicated vide CCE's Pros Rc.No.722/Admn.VI-2/2007,dt.05.05.2008. Aggrieved by this proceeding they fled WP No.19380 of 2010 before Hon'ble High Court with a prayer to declare the impugned Proceedings by which their cases were rejected for absorption into Grant-in-aid is illegal and with a consequential direction to absorb the Petitioners into Grant- in-aid. Basing on it, interim direction was given by Hon'ble High Court dated: 21-06-2012 in W.P M.P No: 24549 of 2010 in W.P No. 19380 of 2010. Subsequently, orders were issued in WPMP No.24549 of 2010 in WP No.19380 of 2010 were examined by CCE and rejected the same.

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3. Finally, the Hon'ble High Court of Andhra Pradesh, in W.P.No.19380 of 2010, passed orders on 20.11.2018 as follows:

> *" the Court having considered the rival submissions of the parties is of the considered view that the petitioners herein are also similarly situated as the petitioner in W P No.20036 of 2003 and the respondents have complied with the orders passed in favour of the petitioners in WP No.20036 of 2003 by way of issuing G O Ms.No.3 Dated:10.1.2018. This court did not fnd any reason to deviate from the said view taken by this Hon'ble Court. Therefore, this writ petition is allowed and petitioners shall be absorbed in the aided vacancies from the date of arising of vacancies under the respondent Nos.3 and 4 with all consequential benefits*

4. Later, the petitioner fled a contempt case No.545 of 2019 for non compliance of the orders dated:20.11.2018 of Hon'ble High Court of A.P, in W.P.No. 19380 of 2010.

5. Aggrieved by the order dated:20.11.2018 of the Hon'ble High Court of Andhra Pradesh in W.P.No.19380 of 2010, the Department has fled Writ Appeal No.340 of 2019 before the Hon'ble High Court on the following grounds:

(i) That the Petitioners were all appointed as Part Time Lecturers on adhoc basis with consolidated pay during 2000-2001 by the Management in clear violation of Government instructions issued in Memo.No.1458/CE. I/91-1, dated: 11.07.1991.

(ii) In pursuance of the orders of the Hon'ble High Court, Government vide Memo No.9543/CE.II.1/2012-Dt.15.12.2012, H.E.Dept and the request of the petitioners Viz Smt. B Nirmala and Sri T.Syam Prasad, un-aided Lecturers in Economics and Telugu for regularization of their services and admission into Grant- in- Aid was rejected on the grounds that they were appointed against Un- aided posts as Un- aided Lecturers with a condition that they should not seek admission into Grant in aid and there is no statutory provision available for absorption of Un aided Lecturers into Grant in aid after issuance of G.O.Ms.No.35 Education, dated: 27.03.2006.

(iii) that after promulgation of Act 2 of 1994, absorption of the persons working against un aided posts in aided posts is not permissible.

(iv) Though the procedure/Rule prescribed for appointment of a Lecturer in an Un aided/Aided post is the same, the liability of paying salaries to the Lecturer appointed in Un aided post lies with the Management of the college whereas such liability lies with the Government in respect of aided posts. It is most relevant to submit here that Act 2 of 1994 prohibits absorption/ regularization of part time/adhoc lecturers. The Petitioners who were appointed in an Unaided post on adhoc /part time basis are not entitled for Grant in aid as per the said provisions of the Act.

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(v) Section 46 (1) of A.P. Education Act 2 of 1982 clearly speaks that Grant in aid is not a Statutory provision. This was confrmed by the Hon'ble Supreme Court of India in a case of State of Assam Vs Ajit Kumar Sharma. Following the Judgement, the Division Bench of Hon'ble High Court of AP in WP No.8697 of 2015, dt: 07.11.2005 held that no Private Educational Institutions or its employee has legal right to compel fnancial assistance by the State. It is rightly observed by the Hon'b1e Courts that the managements do not claim financial assistance/Grant in aid as a matter of right.

(vi) As per Rule 7(2) (4) of Education Institutions (Establishment, Recognition, Administration and control of Institutions of Higher Education) Rules,1987 issued vide G.O.Ms.No.29 Education, dt: 5.02.1987, payment of salaries to un aided staf is the responsibility of the Management.

(vii) Government vide G.O.Ms.No.35 Education Department, dt: 27.03.2006 has taken the decision imposing ban on recruitment of Lecturers in aided colleges in the State of Andhra Pradesh, keeping in view a drastic fall in admissions in aided colleges which resulted in inadequate workload and compelled to redeploy several Surplus Aided Lecturers to needy Government Degree Colleges.

(viii) The Government Orders vide G.O.Ms.No.328 Education, dated: 15.10.1997 in which a scheme was evolved to regularize the services of Part time Lecturers with reference to the conditions mentioned therein was rescinded vide G.O.Ms.No.283 Education, dt:03.11.1999 as the said scheme was evolved as a onetime measure. Hence, the Part time Lecturers engaged by the Management cannot be regularized as the scheme was once for all rescinded.

(ix) It is a settled law that there Article 14 cannot be invoked for perpetuating illegality. Merely because some earlier judgments have been passed on wrong appreciation/non-appreciation of legal principles cannot prevent a court of law from reversing the said position upon being apprised of the correct legal position. The Hon'ble High Court ought to have considered the principle laid down by this Hon'ble Court

6. However, the Writ Appeal No.340 of 2019 was dismissed on 31.07.2020 observing that the reasons as stated by the Appellants seeking condonation of the delay deserves no consideration.

7. Aggrieved by the impugned final judgment and the orders dated:20.11.2018 of Hon'ble High Court of A.P, in W.P.No. 19380 of 2010 passed by Hon'ble High Court of T.S & A.P the Department fled Special Leave Petition (C) No. 14095 -14097 of 2020 before the Hon'ble Supreme Court of India with a prayer to set aside the said order on the following grounds.

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(1) In pursuance of the orders of the Hon'ble High Court Government Vide Memo.No.9543/CE.II.1/2012, Dt.15.12.2012 informed that the request of the petitioners Viz Smt. B Nirmala and Sri T Syam Prasad un aided lecturers in Economics and Telugu for regularization of their services and admission into Grant in Aid was rejected on the grounds that they were appointed against Unaided posts as Un aided Lecturers with a condition that they should not seek admission into Grant in aid and there is no statutory provision available for absorption of Un aided Lecturers into Grant in aid after issuance of G.O.Ms.No.35 Education, dated:27.03.2006.

(2) That the Petitioners were all appointed as Part time Lecturers on adhoc basis with consolidated pay during 2000-2001 by the Management in clear violation of Government instructions issued in Memo.No.1458/CE.I/91-1, dated: 11.07.1991.

(3) After promulgation of Act 2 of 1994 Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staf Pattern and Pay Structure)) absorption of the persons working against un aided posts, into aided posts is not permissible.

(4) Initially, the Private Management was permitted to start colleges under specific condition that they will never be sanctioned Grant in aid. It itself adequately speaks that the Managements of Private Educational Institutions do not have any right to claim for Grant in aid from Government and therefore, the candidates employed by the Managements of Colleges also do not have any right for Grant in aid and cannot compel the Government for Grant in aid because Grant in aid to the Private Educational Institutions is not statutory under section 46 of A.P. Education Act 1982.

(5) That the Respondents were appointed after 01.03.1985 as Un aided Lecturers against Un aided posts in Un aided Sections started, cannot be considered for Grant in aid in view of Section 3(b) of Act 22 of 1988.

(6) Further in any event, it is a settled law that there Article 14 cannot be invoked for perpetuating illegality. Merely because some earlier judgments have been passed on wrong appreciation/non-appreciation of legal principles cannot prevent a court of law from reversing the said position upon being apprised of the correct legal position. The Hon'ble High Court ought to have considered that principle laid down by this Hon'ble Court in the case of Vice Chancellor, Md University Rohtak Vs.Jahan Singh reported m (2007) 5 SCC 77, wherein this Hon'ble High Court was pleased to hold that:

> "Even assuming the respondent and the said Shri. Taneja were similarly situated, we may observe that Article 14 of the Constitution of India carries with it a positive concept. Article 14 of the Constitution cannot be invoked, for perpetuating illegality." [See Kuldeep Singh v. Govt, of NCT of Delhi reported in (2006) 5 SCC 702]. To similar effect are the observations of this Hon'ble Court in Bihar Public Service Commission vs. Kamini & Others reported in (2007)5 SCC 519 , wherein this Hon'ble High Court-was pleased to hold as under:

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"In our opinion, the submission of the learned counsel for the Commission is well founded and must be accepted. Therefore, even if in 1993, some ineligible candidates were wrongly treated as eligible, the first respondent cannot insist that she also must be treated eligible though she is ineligible. In our considered opinion, such an action cannot give rise to equality clause enshrined by Article 14 of the Constitution. It is well settled and needs no authority that misconstruction of a provision of law in one case does not give rise to a similar misconstruction in other cases on the basis of doctrine of equality. An illegality cannot be allowed to be perpetuated under the so-called 'equality doctrine'. That is not the sweep of article 14. Even that contention, therefore, has not impressed us."

From a perusal of the above, it is evident that the reliance placed by the Hon'ble High Court on previous judgments without any reference to the applicable law, is ex facie erroneous and is therefore unsustainable.

8. However, the Hon'ble Supreme Court of India on 1.12.2020 dismissed the SLP (C) No. 14095-14097 of 2020 and ordered as follows:

"We are not inclined to interfere with the impugned judgment passed by the High Court. The special leave petitions are accordingly, dismissed. Pending application stands disposed of."

9. Contempt proceedings are in force against Special Chief Secretary to Government, Higher Education Department and, Special Commissioner of Collegiate Education, Andhra Pradesh, Vijayawada before the Hon'ble High Court Division Bench in contempt case No.545 of 2019 for non compliance of the orders dated:20.11.2018 of Hon'ble High Court of A.P, in W.P.No. 19380 of 2010. The Contempt Case No.545 of 2019 was posted on 20.08.2021 for compliance.

10. As the Writ Appeal No.340 of 2019 fled before Hon'ble High Court of A.P. and also Special Leave Petition (C) No. 14095-14097 of 2020 fled before the Hon'ble Supreme Court of India were dismissed, Government after careful examination of the matter in consultation with advisory departments hereby accord permission to the Commissioner of Collegiate Education of Andhra Pradesh to implement the orders of the Hon'ble High Court of A.P, dated:20.11.2018 in W.P.No. 19380 of 2010 for regularizing the services of Smt. B.Nirmala, Un-aided Lecturer in Economics and Sri. T.Syam Prasad, Un-aided Lecturer in Telugu of A.C. College, Guntur, Guntur Dsit., duly invoking Memo.No.573/225/A3/PC.III/97, Finance Department, dated.01.09.1997 i.e., with prospective effect from the date of issue of orders by Competent appointing authority, on condition that the said vacancy is clear, regular and continued from time to time till date, subject to outcome of Review Petition vide Diary No.1134 of 2021 in SLP (C).No.014095/2020 to avoid further legal complications.

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11. This order applies for the above mentioned candidates only and shall not be taken as a precedent, either now or in the future.

12. The Commissioner of Collegiate Education, A.P, Vijayawada shall take further action accordingly.

13. This order issues with the concurrence of the Finance Department, vide their U.O.No.HROPDPP/2/2021, Computer No.1322886 dated:28-08-2021 .

(BY ORDER AND IN THE NAME OF THE GOVERNMENT OF ANDHRA PRADESH)

Satish Chandra
Special Chief Secretary to Government

To
The Commissioner of Collegiate Education,
Andhra Pradesh, Vijayawada,
The individual (through the CCE, A.P. Vijayawada.)
Copy to:
The Accountant General, A.P. Hyderabad/ Vijayawada.
The Director of Treasuries and Accounts, A.P, Vijayawada,
The Pay and Accounts Ofcer, A.P, Vijayawada.
The P.S to Secretary to Chief Minister.
The Addl.P.S to Minister [Education].
The P.S to Chief Secretary .
The P.S to Spl.C.S to Higher Education Department,
The Advocate on Records, A.P, Supreme Court of India, New Delhi.
The G.P for Higher Education, High Court of A.P. Amaravati.
Finance (FMU-THE) Department
Law Department,
Sf/Sc.

// FORWARDED :: BY ORDER//

SECTION OFFICER